

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No.: EB-10-DL-0056
Andrews Tower Rental, Inc.	)	
	)	NAL/Acct. No: 201132500001
Owner of Antenna Structure	)	
ASR#: 1058250	)	FRN: 0006139463
Oplin, Texas	)	

**FORFEITURE ORDER**

**Adopted:** October 31, 2011

**Released:** November 1, 2011

By the Regional Director, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“*Order*”), we issue a monetary forfeiture in the amount of three thousand seven hundred fifty dollars (\$3,750) to Andrews Tower Rental, Inc. (“Andrews Tower”), owner of antenna structure number 1058250, in Oplin, Texas (“Tower”), for willful and repeated violation of section 303(q) of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> and section 17.51(a) of the Commission’s rules (“Rules”).<sup>2</sup> The noted violations involve Andrews Tower’s failure to exhibit the required lighting on its antenna structure after sunset.

**II. BACKGROUND**

2. On April 7, 2011, the Enforcement Bureau’s Dallas Office (“Dallas Office”) issued a Notice of Apparent Liability and Order (“*NAL*”)<sup>3</sup> to Andrews Tower for its failure to exhibit required antenna structure lighting.<sup>4</sup> As discussed in detail in the *NAL*, on July 12, 2010, an agent from the Dallas Office observed a tower light outage, which Andrews Tower later confirmed began July 8, 2010 and was not repaired as of July 15, 2010.<sup>5</sup> Andrews Tower also failed to notify the Federal Aviation Administration (“FAA”) of the tower light outage prior to July 15, 2010.<sup>6</sup> Andrews Tower responded to the *NAL* stating that it would demolish the Tower as soon as possible and requested reduction or cancellation of the

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<sup>1</sup> 47 U.S.C. § 303(q).

<sup>2</sup> 47 C.F.R. § 17.51(a).

<sup>3</sup> *Andrews Tower Rental, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 5144 (South Central Region Enf. Bur. 2011). A comprehensive recitation of the facts and history of this case can be found in the *NAL* and is incorporated herein by reference.

<sup>4</sup> The Tower is 134.1 meters above ground in height and is required to be painted and lit. See Antenna Structure Registration Database, Registration Number 1058250.

<sup>5</sup> *NAL* at 5144-5145.

<sup>6</sup> *Id.* See also 47 C.F.R. § 17.48 (requiring owners of registered antenna structures that have been assigned lighting specifications to report immediately to the FAA any observed or otherwise known extinguishment of any flashing obstruction light not corrected within 30 minutes).

proposed forfeiture based on its inability to pay the forfeiture.<sup>7</sup> On July 7, 2011, Andrews Tower stated that the Tower was “in all respects lit in accordance with Commission requirements” and that it had obtained estimates for the demolition of the Tower.<sup>8</sup>

### III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with section 503(b) of the Act,<sup>9</sup> section 1.80 of the Rules,<sup>10</sup> and the *Forfeiture Policy Statement*.<sup>11</sup> In examining Andrews Tower’s response, section 503(b)(2)(E) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>12</sup> As discussed below, we have considered Andrews Tower’s response in light of these statutory factors and find a reduction based solely on its documented inability to pay is warranted.

4. Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>13</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act<sup>14</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>15</sup> The Commission

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<sup>7</sup> Letter from Lewis H. Goldman, Attorney for Andrews Tower Rental, Inc., to James D. Wells, District Director, Dallas Office, dated June 3, 2011 (“*NAL Response*”). Karen McMillan is the only person who responded to agents from the Dallas Office on behalf of Andrews Tower Rental, which prompted the agents to conclude that she was the owner of Andrews Tower Rental, Inc. In the *NAL Response*, Andrews Tower clarified that Andrews Tower is owned by Ms. McMillan’s “elderly and physically infirm” parents, and that Ms. McMillan was only “voluntarily seeking to assist her elderly and infirm parents with their personal business affairs.” Also, Andrews Tower admitted that it owns the Tower. *NAL Response* at 1.

<sup>8</sup> Letter from Lewis H. Goldman, Attorney for Andrews Tower Rental, Inc., to Diane Law-Hsu, Regional Counsel, South Central Region, Enforcement Bureau, dated July 7, 2011.

<sup>9</sup> 47 U.S.C. § 503(b).

<sup>10</sup> 47 C.F.R. § 1.80.

<sup>11</sup> *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

<sup>12</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>13</sup> 47 U.S.C. § 312(f)(1).

<sup>14</sup> H.R. Conf. Rep. No. 97-765, at 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the [A]ct (e.g., section 503) . . . . As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission’s application of those terms . . . .”).

<sup>15</sup> *See, e.g., Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California Broadcasting Co.*”).

may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>16</sup> “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.<sup>17</sup>

5. As set forth in the *NAL*, an agent from the Dallas Office observed that the Tower was not lit after sunset on July 12, 2010. Andrews Tower admitted that the lighting outage on the Tower began July 8, 2010 and was not repaired as of July 15, 2010, the date of a telephone conversation between Andrews Tower and an agent from the Dallas Office. Andrews Tower also admitted that it did not contact the FAA about the outage prior to July 15, 2010. Moreover, Andrews Tower does not deny any of these facts in its response to the *NAL*. Thus, we find that Andrews Tower willfully and repeatedly violated section 303(q) of the Act and section 17.51(a) of the Rules by failing to exhibit required red obstruction lighting on the Tower after sunset.

6. In its response to the *NAL*, Andrews Tower asserts that the forfeiture would pose a financial hardship and requests reduction or cancellation of the forfeiture on those grounds. With regard to a downward adjustment based on inability to pay, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.<sup>18</sup> We have reviewed our records and Andrews Tower’s submitted documentation and conclude that the forfeiture should be reduced to \$3,750, an amount within the range determined by the Bureau to be affordable.<sup>19</sup>

7. We remind Andrews Tower that it is responsible for observing the lights on all of its antenna structures at least once every 24 hours<sup>20</sup> and notifying the FAA immediately of any light outages lasting more than 30 minutes.<sup>21</sup> Andrews Tower must maintain the lights on its antenna structures, even if those structures are no longer occupied by any radio licensees, until the structures are dismantled.<sup>22</sup> Failure to comply with these requirements may result in additional enforcement action. Finally, we direct Andrews Tower to notify the Dallas Office when the Tower is dismantled at Federal Communications Commission, Enforcement Bureau, South Central Region, Dallas Office, 9330 LBJ Freeway, Suite 1170, Dallas, Texas, 75243.

#### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission’s rules, Andrews Tower Rental, Inc. IS LIABLE FOR A MONETARY FORFEITURE in the amount of

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<sup>16</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“*Callais Cablevision, Inc.*”) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>17</sup> *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

<sup>18</sup> See *PJB Communications of Virginia, Inc.*, Forfeiture Order, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues); *Local Long Distance, Inc.*, Forfeiture Order, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator’s gross revenues); *Hoosier Broadcasting Corporation*, Forfeiture Order, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator’s gross revenues).

<sup>19</sup> See *id.*

<sup>20</sup> See 47 C.F.R. § 17.47.

<sup>21</sup> See 47 C.F.R. § 17.48.

<sup>22</sup> See 47 U.S.C. § 303(q) (requiring the owner of a tower that ceases to be licensed by the Commission for the transmission of radio energy to maintain the prescribed painting and/or illumination of such tower until it is dismantled).

three thousand seven hundred fifty dollars (\$3,750) for violations of sections 303(q) of the Act and section 17.51(a) of the Rules.<sup>23</sup>

9. **IT IS FURTHER ORDERED** that Andrews Tower Rental, Inc. **SHALL SUBMIT** a statement as described in paragraph 7 to the Dallas Office within thirty (30) calendar days of the release date of this Forfeiture Order.

10. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Rules within thirty (30) calendar days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for enforcement pursuant to section 504(a) of the Act.<sup>24</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk with any questions regarding payment procedures at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov). Andrews Tower will also send electronic notification on the date said payment is made to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Andrews Tower Rental, Inc. at 2221 Oak Knoll, Colleyville, TX 75034 and to its counsel, Lewis H. Goldman, P.C., at 45 Dudley Court, Bethesda, MD 20814.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton  
Regional Director, South Central Region  
Enforcement Bureau

<sup>23</sup> 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 17.51(a).

<sup>24</sup> 47 U.S.C. § 504(a).